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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1369 OF 2007

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Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

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Mr. Ratnakar Sharma for the appellant.

Shri S.B. Jobanputra, respondent in person.

CORAM : ANOOP V. MOHTA,J.

DATED : 26th September, 2007.

P.C.

1. Admittedly, by order dated 30th July, 2004 in suit No. 6734 of 1983, the Court has observed after hearing both the parties as follows:-

. "Both the Advocates that Defendant No.2, who is the mother of Plaintiff and Defendant No.1 expired on 22/01/1985. In view thereof, suit stands abated against Defendant No.2. Suit to proceed only against Defendant No.1."

2. Having once permitted, the parties to proceed only against defendant No.1 as

suits already stands abated against defendant No.2. The oral directions as observed and recorded in the impugned order is totally contrary to the clear finding recorded in order dated 30th July, 2004.

3. The dismissal of the present suit on the ground of non-joinder of the parties is improper. Admittedly, there is no challenge made to the order dated 30th July, 2004 till this date by both the parties.

4. The suit is for dissolution of partnership. The parties are appearing in person. It is, therefore, necessary that, full opportunity to be given to the parties to contest the matter on merit. Resultantly, the impugned order dated 28/09/2006 is quashed and set aside.

5. The trial court to proceed with the matter after hearing both the parties in accordance with law, without influenced

by the present order passed by this Court. By consent, the parties are agreed to appear before the trial Court on 23rd October, 2007. As the suit being of the year 1983, the learned trial court to dispose of the suit as early as possible.

6. Resultantly, the first appeal is allowed.

[ANOOP V. MOHTA, J.]